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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,729	07/27/2006	Jon Grant	AIP-011	1941
45812 7590 12/10/2009 Law Office of Michael D. Eisenberg Intellectual Property Law 1335 Filbert St. Suite 206 San Francisco, CA 94109				
EXAMINER				
SKURDAL, COREY NELSON				
ART UNIT		PAPER NUMBER		
3782				
NOTIFICATION DATE		DELIVERY MODE		
12/10/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

meisenberg@mdopatents.com

Office Action Summary

Application No.

10/565,729

Applicant(s)

GRANT, JON

Examiner

COREY N. SKURDAL

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/21/2009 has been entered.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parsons (US 4,809,893), in view of Fawcett (US 5,803,333) and Hall et al. (US 2002/0179647).

Parsons discloses a portable flexible carrier substantially as claimed including: a cover 10 defining a pouch 20 to receive a fluid container; wherein an end of the pouch is formed as a sleeve 21 projecting forwardly therefrom and having an opening; a first seal 22/23/24 disposed at the sleeve of the pouch to selectively seal the pouch; a flap 30 disposed at the cover to substantially encase the top portion of the pouch; a second seal 33/34 being disposed on the flap to detachably couple the flap to the front of the cover; and shoulder straps 17 disposed at the cover. Parsons does not have a flexible

fluid container with a tube, the cover made from a chemically hardened material, and a tube conduit made from the same chemically hardened material.

Fawcett '333 teaches that it is known to carry a fluid container 48 made of flexible material within a cover 14/16 defining a pouch 12 to receive the fluid container, the container 48 having a tube 50 with a first and a second end extending from the cover, the first end received by the fluid container, and the tube being made from a flexible material. As such, it would have been obvious to one of ordinary skill in the art at the time of invention to carry a fluid container within the cover of Parsons as taught by Fawcett '349 in order to transport the fluid container and provide fluid to the wearer of the Parsons backpack.

Furthermore, Hall teaches a hydration system with a fluid container 110 and a tube 130, wherein the hydration system is made from select outer layers so as to protect the carried fluid from harmful chemical toxins and biological agents. This is accomplished by an outer bladder 510 made from a chemically hardened material as claimed, and by an outer conduit layer along the length of the tube which made from a fluorinated polymer (paragraph 31, lines 11-13). As Hall teaches the general concept of a drinking container with an outer cover and a conduit which are made from a material that is impermeable to chemical toxins and biological agents, it would have been obvious to one skilled in the art to have provided a conduit on the tube of Fawcett '333 and to have made the cover of Parson's and conduit from any well known material that is impermeable to chemical toxins, and biological agents (i.e. 3TOX), in order to provide a safe means for transporting drinking fluids.

Response to Arguments

3. Applicant's arguments filed 9/21/09 have been fully considered but are moot in view of the new grounds of rejection.

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to COREY N. SKURDAL whose telephone number is (571)272-9588. The examiner can normally be reached on M-Th 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. N. S./

Examiner, Art Unit 3782

Art Unit: 3782

/Nathan J. Newhouse/

Supervisory Patent Examiner, Art Unit 3782